

CLIENT ALERTS

Open Enrollment Season Is Here – Are You Prepared?

9.27.2016

Every fall, many employers which sponsor welfare benefit plans turn their attention to benefit design for the coming year. As a result, the open enrollment season provides the perfect opportunity to ensure current welfare benefit legal requirements are kept up to speed: plan documents and summary plan descriptions; annual notices; and nondiscrimination testing.

Plan Documents and Summary Plan Descriptions

Most employers utilize a benefit program or insurance booklet prepared by a third party administrator or insurer, as the substantive summary of key benefit provisions in their welfare plans. In fact, most plans and corresponding summary plan descriptions incorporate these very documents by reference. As a result, to keep the documents up-to-date, each employer should ensure that it requests from the third party administrator or insurer the updated benefit programs and descriptions for 2017. Once in receipt, these documents will become the attached booklets and information for the official plan, as well as the summary plan description.

In addition, employers frequently adopt a “wrap” style plan document to bind around the benefit program or insurance booklet prepared by a third party administrator or insurer in order to include eligibility, enrollment, and legal information that such benefit program or insurance booklets frequently lack. These “wrap” style documents need to be updated – and one such update will be needed effective January 1, 2017 for final regulations issued by the Internal Revenue Service and the Department of Labor pertaining to market reform mandates under the Patient Protection and Affordable Care Act (including, but not limited to, the requirement to provide coverage to dependent children until age 26, the prohibition on lifetime and annual limits, and the external claims review procedure). If you have a “wrap” style document for your group health plan, you will need to update the document before the beginning of the

Related Services

[Employee Benefits](#)

[Labor and Employment](#)

CLIENT ALERTS

upcoming calendar year plan year. Furthermore, employers sponsoring cafeteria plans with existing opt-out cash arrangements or flexible credit offerings should review their cafeteria plan design to assess compliance with the affordability rules under the Patient Protection and Affordable Care Act in light of Internal Revenue Service guidance taking effect.

Also, as noted above, if insurance booklets are used as summary plan descriptions, those booklets rarely satisfy SPD legal requirements, and call for add-on content prepared by legal counsel. The updated booklet and add-on content likely requires annual updating and distribution to participants.

Annual Notices

Each year, ERISA and the Internal Revenue Code require plan sponsors to distribute specific notices regarding welfare benefits. Open enrollment provides the perfect opportunity to distribute these notices, as most employers can include the notices with any election forms provided to plan participants.

A sample of the relevant notices that must be distributed annually include:

- Summary of Benefits and Coverage
- Grandfathered Plan notice (if applicable)
- Notice of Patient Protections
- Children's Health Insurance Program Reauthorization Act notice
- Women's Health and Cancer Rights Act notice
- Medicare Part D Creditable Coverage notice
- Michelle's Law notice (if the materials describe any requirement for certifying student status)
- Updated summary plan descriptions (or summaries of material modifications)

Nondiscrimination Testing

Certain welfare benefits must pass nondiscrimination tests on an annual basis. There are two tests for self-insured medical plans, three tests for cafeteria plans, and four tests for dependent care flexible spending accounts. These nine tests are required by the Internal Revenue Code, and failure to satisfy the tests results in taxation of these benefits to your highly compensated employees and possible under-withholding taxes and penalties.

Self-insured medical arrangements (including health flexible spending accounts and health reimbursement arrangements) are subject to the following two tests:

1. Eligibility
2. Benefits

CLIENT ALERTS

Cafeteria Plans are subject to the following three tests:

1. Eligibility
2. Contributions and Benefits
3. Key Employee Concentration

Dependent care flexible spending accounts are subject to the following four tests:

1. Eligibility
2. Contributions and Benefits
3. 5% Owners Concentration
4. 55% Average Benefits

Although there appears to be some redundancy in the tests above (e.g., Eligibility and Benefits tests), each of the tests operates somewhat differently, with different data requirements and prohibited group members.

Assistance?

Butzel Long can help you prepare, or review, the plan documentation, summary plan descriptions, and annual notices for the upcoming plan year to ensure compliance and avoid costly penalties imposed by ERISA and the Internal Revenue Code. Butzel Long can also review your current nondiscrimination testing methodology and results, as well perform these tests for you and provide you with a readable, understandable report for your audit-ready files.

If you have any questions about the above issues related to your welfare benefit plans, or if you need assistance with compliance, please contact the author of this alert or your Butzel Long attorney.

Mark W. Jane

734.213.3617

jane@butzel.com